

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

July 10, 1950

Mr. David H. Palmer, Jr.
County Attorney
Yavapai County
Prescott, Arizona

Dear Mr. Palmer:

We have been giving careful consideration to the matter contained in your letter of June 22, 1950. You are concerned with the proper construction to be placed upon the provisions of Section 73-505, ACA 1939 as amended, regarding the statutory limitation on increase of tax levies contained therein. You state in part:

"Section 73-505 ACA 1939 provides, as you know, that neither the budget estimate nor the tax levy shall exceed, by more than 10%, the respective amount levied the year before. This county had a budget of something like \$653,000 last year for the road and general funds of this county, of which approximately \$89,000 was raised by taxation, the balance, I understand, coming from sales tax and other receipts.

* * * * *

As this is a pressing matter to this county, I should appreciate your opinion as to whether or not this county could fix a tax levy, with the approval of the Tax Commission, according to the last paragraph of the hereinabove first cited section, since no tax was levied for any purpose other than the road fund, or is it your opinion that the only increase can be \$8900, as hereinabove mentioned. * * *"

We are in agreement with you that the limitation on increase of tax levies found in Section 73-505, supra, applies to the situation you present, and that the governing body of the county, in finally adopting a budget estimate for the current year and setting forth the amount to be raised by direct taxation therein, is expressly prohibited by statute from prescribing an amount which would exceed by more than ten (10) per cent the amount levied upon the tax rolls for the preceding fiscal year

after excluding certain enumerated emergency and special levies.
Section 73-505 reads as follows:

"Limitation on increase of tax levies--
The governing body of each county, city or town, on or before the third Monday in August in each year shall fix, levy and assess the amount to be raised by direct taxation, which, together with all other sources of revenue, as estimated, and unencumbered balances from the previous fiscal year, shall equal the total of amounts proposed to be expended in the budget for the current fiscal year, designate the amounts which shall be levied for each purpose appearing in the adopted budget and fix and determine a rate on each one hundred dollars (\$100) of taxable property shown by the finally equalized valuations of property, less exemptions, appearing upon the tax rolls for such fiscal year, which when extended upon such valuations will, in the aggregate, produce the entire amount to be raised by direct taxation for that year. The budget estimate as finally adopted shall not exceed by more than ten (10) per cent the total amount proposed for expenditure in the budget adopted for the previous year, after excluding expenditures for school, bond, special assessment and district levy, primary, general or special election purposes. The amount contained in said budget estimate as finally adopted, required to be raised by direct taxation, shall in no event exceed by more than ten (10) per cent the amount levied upon the tax rolls for the preceding fiscal year after excluding levies for emergency liabilities, schools, bond principal and interest, primary, general or special elections and special assessments and district levies; provided that if no such

amount was levied for the preceding fiscal year by such county, town or city, the governing body thereof may include in the budget such amount to be raised by direct taxation as may be found by the state tax commission to be necessary upon application to it and after notice for hearing given and held upon such application in the manner prescribed by section 73-504, Arizona Code of 1939, and the levy authorized shall not be deemed to be for an emergency expenditure and shall constitute the base for computing the ten (10) per cent levy limitation for the budget of the succeeding fiscal year."

The language of the underlined portion of said section is clear and unambiguous, and there can be no dispute as to its meaning. The proviso regarding recourse to the State Tax Commission clearly has application and can be invoked only when "no such amount", i.e., when no amount whatever (with the specified exclusions), was levied upon the tax rolls for the preceding fiscal year. This statutory limitation on increase of tax levies has, in varying phraseology, long been the law of Arizona. It appeared as a portion of section 4842 of the Revised Statutes of Arizona 1913, Civil Code, was subjected to some amendment in form by Chapter 52, section 3 (d) Laws 1921, was again revised as section 3100 Revised Code of Arizona, 1928, and its present form was adopted by the legislature in Chapter 98, section 4, Laws 1945. The proviso above mentioned was added in 1945. The Arizona Supreme Court construed the limitation as it existed in the Revised Statutes of 1913, section 4842 in Arizona E.R.R. Co. v. County of Graham, 19 Ariz. 320, 170 P. 792. Justice Ross at page 333 of 19 Arizona, after setting out the limitation said:

"The board of supervisors, in levying taxes for all county purposes in the year 1915, was authorized to exceed the levy of the preceding year ten per centum and no more, and any excess over that amount contained in the levy was beyond its jurisdiction. When the board discovered that the levy was excessive

and beyond the limit as fixed by law, it was its duty to scale the estimate down so as to comply with the limitations fixed by sections 4839-4842. It was for the board to determine which item or items of the estimates for county purposes should be reduced so as to conform to the limit fixed by law. If the law limits the expenditures of the county for the current year so that the payment of some of the debts lawfully and rightfully contracted must be postponed, it is not the fault of the board.

The legislature is the source of the taxing power, and, without a grant from it, no taxes can be levied or collected. It has seen fit to limit this power, except in special enumerated cases, so that the burden on the taxpayer for the current year may not be more than ten per centum greater than the preceding year. This was done in the interest of the taxpayer, a policy based upon common sense and reason, and upon an experience and knowledge that, unless some restraint be placed upon counties, the burdens of taxation may be severely hard upon the taxpayers. To emphasize the mandatory and prohibitory character of the requirements of the tax-levying statute, the legislature, in section 4843, provided that any officer violating any of the provisions of sections 4840, 4841, and 4842 should be guilty of a misdemeanor.

If the board of supervisors can expand the limit fixed by law for one county purpose, it can do the same for any and all county purposes. If the board may ignore the statute for one purpose, then it is frittered away, and the burden of taxation which it was intended to curb may be extended without limit." (Emphasis supplied)

As applied to your precise problem, the law requires the conclusion, and it is therefore our opinion, that upon the

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facts which your letter recites, Yavapai County can fix a tax levy for the current fiscal year in an amount not to exceed ten per cent of the amount levied upon the tax rolls for the preceding fiscal year, after excluding the enumerated emergency and special assessments and levies, and that the proviso in the said Section 73-505, supra, can have no application. The fact that the entire levy for the preceding fiscal year was for the "road fund" does not alter the conclusion, as Section 59-604 ACA 1939 expressly provides that the county tax levy for improvement of highways is "to be levied and collected at the same time and in the same manner as other property taxes are collected..." Nor is a levy for the "road fund" within the exclusions set forth in Section 73-505, supra.

We trust that the foregoing will be of aid to you and is sufficient answer to your inquiry.

Very truly yours,

FRED O. WILSON
Attorney General

Richard C. Briney
Assistant Attorney General

RCB:rc